

AMENDED IN ASSEMBLY JANUARY 23, 2006

AMENDED IN ASSEMBLY JANUARY 4, 2006

AMENDED IN ASSEMBLY APRIL 4, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 759

Introduced by Assembly Member Lieber

February 18, 2005

An act to amend Sections 17204, ~~17206, and 17207~~ and 17206 of the Business and Professions Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

AB 759, as amended, Lieber. Unfair competition: actions by ~~county counsels~~ city attorneys.

Existing law authorizes specified governmental agencies to bring an action for unfair competition and to recover a civil penalty from the defendant in those actions. Under existing law, a ~~county counsel, by agreement with the district attorney,~~ city attorney for a city or city and county with a population in excess of 750,000 or for a city and county if the district attorney has consented may bring an unfair competition action ~~involving violations of a county ordinance and recover a civil penalty.~~

This bill would delete the limitations on unfair competition actions brought by a ~~county counsel~~ city attorney for a city and county, allowing the ~~county counsel~~ city attorney of any size city and county, without the consent of the district attorney, to proceed ~~without an agreement with the district attorney and to bring actions that do not involve violations of a county ordinance~~ the action and recover a civil penalty. The bill would also allow a city attorney of any size city to

proceed with an action with the consent of the district attorney and recover a civil penalty.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17204 of the Business and Professions
- 2 Code is amended to read:
- 3 17204. Actions for Injunctions by Attorney General, District
- 4 Attorney, County Counsel, and City Attorneys
- 5 Actions for any relief pursuant to this chapter shall be
- 6 prosecuted exclusively in a court of competent jurisdiction by the
- 7 ~~Attorney General or any district attorney or any county counsel~~
- 8 ~~or by any city attorney of a city, or city and county, having a~~
- 9 ~~population in excess of 750,000, and, with the consent of the~~
- 10 ~~district attorney, by a city prosecutor in any city having a~~
- 11 ~~full-time city prosecutor or, with the consent of the district~~
- 12 ~~attorney, by a city attorney in any city and county in the name of~~
- 13 ~~the people of the State of California upon their own complaint or~~
- 14 ~~upon the complaint of any board, officer, person, corporation or~~
- 15 ~~association or by any person who has suffered injury in fact and~~
- 16 ~~has lost money or property as a result of such unfair competition.~~
- 17 *any person who has suffered injury in fact and has lost money or*
- 18 *property as a result of such unfair competition or in the name of*
- 19 *the people of the State of California upon their own complaint or*
- 20 *upon the complaint of any board, officer, person, corporation, or*
- 21 *association by any of the following:*
- 22 (a) *The Attorney General.*
- 23 (b) *A district attorney.*
- 24 (c) *A county counsel authorized by agreement with the district*
- 25 *attorney in an action involving the violation of a county*
- 26 *ordinance.*
- 27 (d) *A city attorney of a city having a population in excess of*
- 28 *750,000.*
- 29 (e) *A city attorney of a city and county.*
- 30 (f) *A city attorney, with the consent of the district attorney.*
- 31 (g) *A city prosecutor, in a city having a full-time city*
- 32 *prosecutor, with the consent of the district attorney.*

1 SEC. 2. Section 17206 of the Business and Professions Code
2 is amended to read:

3 17206. Civil Penalty for Violation of Chapter

4 (a) Any person who engages, has engaged, or proposes to
5 engage in unfair competition shall be liable for a civil penalty not
6 to exceed two thousand five hundred dollars (\$2,500) for each
7 violation, which shall be assessed and recovered in a civil action
8 brought in the name of the people of the State of California by
9 ~~the Attorney General, by any district attorney, by any county~~
10 ~~counsel, by any city attorney of a city, or city and county, having~~
11 ~~a population in excess of 750,000, with the consent of the district~~
12 ~~attorney, by a city prosecutor in any city having a full-time city~~
13 ~~prosecutor, or, with the consent of the district attorney, by a city~~
14 ~~attorney in any city and county, in any court of competent~~
15 ~~jurisdiction; any of the parties described in subdivisions (a) to~~
16 ~~(g), inclusive of Section 17204, in any court of competent~~
17 ~~jurisdiction.~~

18 (b) The court shall impose a civil penalty for each violation of
19 this chapter. In assessing the amount of the civil penalty, the
20 court shall consider any one or more of the relevant
21 circumstances presented by any of the parties to the case,
22 including, but not limited to, the following: the nature and
23 seriousness of the misconduct, the number of violations, the
24 persistence of the misconduct, the length of time over which the
25 misconduct occurred, the willfulness of the defendant's
26 misconduct, and the defendant's assets, liabilities, and net worth.

27 (c) If the action is brought by the Attorney General, one-half
28 of the penalty collected shall be paid to the treasurer of the
29 county in which the judgment was entered, and one-half to the
30 General Fund. If the action is brought by a district attorney or
31 county counsel, the penalty collected shall be paid to the
32 treasurer of the county in which the judgment was entered.
33 Except as provided in subdivision (e), if the action is brought by
34 a city attorney or city prosecutor, one-half of the penalty
35 collected shall be paid to the treasurer of the city in which the
36 judgment was entered, and one-half to the treasurer of the county
37 in which the judgment was entered. The aforementioned funds
38 shall be for the exclusive use by the Attorney General, the district
39 attorney, the county counsel, and the city attorney for the
40 enforcement of consumer protection laws.

(d) The Unfair Competition Law Fund is hereby created as a special account within the General Fund in the State Treasury. The portion of penalties that is payable to the General Fund or to the Treasurer recovered by the Attorney General from an action or settlement of a claim made by the Attorney General pursuant to this chapter or Chapter 1 (commencing with Section 17500) of Part 3 shall be deposited into this fund. Moneys in this fund, upon appropriation by the Legislature, shall be used by the Attorney General to support investigations and prosecutions of California's consumer protection laws, including implementation of judgments obtained from such prosecutions or investigations and other activities which are in furtherance of this chapter or Chapter 1 (commencing with Section 17500) of Part 3.

(e) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of any reasonable expenses incurred by the board shall be paid to the Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the Treasurer. The amount of any reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county that funds the local agency.

(f) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered for the exclusive use by the city attorney for the enforcement of consumer protection laws. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered or, upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the

1 premises that were the subject of the action, and that the balance
2 of the penalty be paid to the treasurer of the city and county.

3 SEC. 3. ~~Section 17207 of the Business and Professions Code~~
4 ~~is amended to read:~~

5 ~~17207. (a) Any person who intentionally violates any~~
6 ~~injunction prohibiting unfair competition issued pursuant to~~
7 ~~Section 17203 shall be liable for a civil penalty not to exceed six~~
8 ~~thousand dollars (\$6,000) for each violation. Where the conduct~~
9 ~~constituting a violation is of a continuing nature, each day of that~~
10 ~~conduct is a separate and distinct violation. In determining the~~
11 ~~amount of the civil penalty, the court shall consider all relevant~~
12 ~~circumstances, including, but not limited to, the extent of the~~
13 ~~harm caused by the conduct constituting a violation, the nature~~
14 ~~and persistence of that conduct, the length of time over which the~~
15 ~~conduct occurred, the assets, liabilities, and net worth of the~~
16 ~~person, whether corporate or individual, and any corrective~~
17 ~~action taken by the defendant.~~

18 ~~(b) The civil penalty prescribed by this section shall be~~
19 ~~assessed and recovered in a civil action brought in any county in~~
20 ~~which the violation occurs or where the injunction was issued in~~
21 ~~the name of the people of the State of California by the Attorney~~
22 ~~General or by any district attorney, any county counsel, or any~~
23 ~~city attorney in any court of competent jurisdiction within his or~~
24 ~~her jurisdiction without regard to the county from which the~~
25 ~~original injunction was issued. An action brought pursuant to this~~
26 ~~section to recover civil penalties shall take precedence over all~~
27 ~~civil matters on the calendar of the court except those matters to~~
28 ~~which equal precedence on the calendar is granted by law.~~

29 ~~(c) If such an action is brought by the Attorney General,~~
30 ~~one-half of the penalty collected pursuant to this section shall be~~
31 ~~paid to the treasurer of the county in which the judgment was~~
32 ~~entered, and one-half to the State Treasurer. If brought by a~~
33 ~~district attorney or county counsel the entire amount of the~~
34 ~~penalty collected shall be paid to the treasurer of the county in~~
35 ~~which the judgment is entered. If brought by a city attorney or~~
36 ~~city prosecutor, one-half of the penalty shall be paid to the~~
37 ~~treasurer of the county in which the judgment was entered and~~
38 ~~one-half to the city, except that if the action was brought by a~~
39 ~~city attorney of a city and county the entire amount of the penalty~~

1 collected shall be paid to the treasurer of the city and county in
2 which the judgment is entered.

3 (d) If the action is brought at the request of a board within the
4 Department of Consumer Affairs or a local consumer affairs
5 agency, the court shall determine the reasonable expenses
6 incurred by the board or local agency in the investigation and
7 prosecution of the action.

8 Before any penalty collected is paid out pursuant to subdivision
9 (e), the amount of the reasonable expenses incurred by the board
10 shall be paid to the State Treasurer for deposit in the special fund
11 of the board described in Section 205. If the board has no such
12 special fund, the moneys shall be paid to the State Treasurer. The
13 amount of the reasonable expenses incurred by a local consumer
14 affairs agency shall be paid to the general fund of the
15 municipality or county which funds the local agency.